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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

RECOVERY LAND HOLDING, LLC, a Utah limited liability company, Plaintiff, vs. CITY OF SOUTH OGDEN, and DOE DEFENDANTS I through X, Defendants.	**OPPOSITION TO SHORT FORM DISCOVERY MOTION** Case No. 1:17-cv-00152 PMW Magistrate Judge Evelyn J. Furse Judge Ted Stewart

Plaintiff Recovery Land Holding, LLC ("Plaintiff" or "Brighton") submits this Opposition to the Short Form Discovery Motion ("Motion") filed by Defendant City of South Ogden (the "City") and states as follows:

The Court should deny the City's baseless request for an order excluding Plaintiff from using information or witnesses Defendant argues should have been disclosed in response to discovery requests for two reasons:

First, the Motion ignores this Court's April 4, 2019 Memorandum Decision and Order (the "April 4th Order") in which the Court gave Brighton additional time to obtain affidavits or declarations **or to take discovery**. *See* Dkt. No. 44. The April 4th Order granting additional discovery was issued **after** the original March 31, 2019 close of fact discovery, and the April 4th Order does not set forth a new fact discovery deadline. Beyond this, and as noted by the Court in the April 4th Order, discovery in its entirely does not close until August 30, 2019. *See* Docket No. 44, at 7. *See also* Docket No. 24, at 3. As such, Brighton may continue its discovery efforts and supplement the information provided in its initial disclosures and responses to the City's written discovery requests as it discovers additional responsive information.

Second, the Motion fails to comply with Fed. R. Civ. P. 37. According to Rule 37(a)(1), "the movant [must] in good faith confer[] or attempt[] to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." The City failed to make a good faith effort to confer with Brighton to obtain the disclosures it now seeks to exclude. The "meet and confer" cited in the Motion only concerned Brighton's deadline to provide responses to the City's written discovery. The parties, however, have never discussed the substance of Brighton's objections and/or responses to the same. Contrary to the City's claim, Brighton served its responses to the City's written discovery on May 30, 2019, which was within the deadline agreed to by the parties. If the City considers Brighton's responses inadequate, it must first make a good faith effort to meet and confer regarding the substance of the responses before involving the Court. Instead, the City filed its Motion the very next day.

Importantly, Brighton will be in a better position to supplement its existing responses to the City's written discovery after Brighton takes several necessary depositions, which it is entitled to do pursuant to the April 4th Order. Brighton is currently in the process of scheduling these depositions. If anything, the Court should consider setting a new fact discovery deadline because the April 4th

Order granting additional discovery supersedes the original March 31, 2019 deadline and does not provide an updated deadline.

Given the foregoing, the City's Motion is without merit, violates this Court's existing orders, and fails to comply with the requirements set forth under Fed. R. Civ. P. 37 and therefore must be denied.

DATED this 10th day of June 2019.

Snell & Wilmer L.L.P.

/s/ Timothy J. Dance
Timothy J. Dance
Kristen J. Overton
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2019, I caused a true and correct copy of the foregoing to be served by electronic court filing notification through the Court's CM/ECF system to all participants of record.

/s/ Sarah Nielsen